



Oct 9 2009  
11:10AM

# EXHIBIT 2

**SETTLEMENT AGREEMENT**

**BETWEEN**

**SHELL OIL COMPANY, SHELL OIL PRODUCTS COMPANY, SHELL PIPELINE  
COMPANY, EQUILON ENTERPRISES LLC, EQUILON PIPELINE COMPANY,  
TEXACO REFINING & MARKETING, INC., EXXON MOBIL CORPORATION,  
CHEVRON U.S.A. INC., CHEVRONTEXACO CORPORATION,  
THRIFTY OIL CO., BEST CALIFORNIA GAS, Ltd.,**

**AND**

**THE CITY OF SANTA MONICA,  
INDIVIDUALLY AND AS THE ASSIGNEE  
OF THE SOUTHERN CALIFORNIA  
WATER COMPANY**

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Schedule 3.13

## SETTLEMENT AGREEMENT

This Settlement Agreement is made by and between Shell Oil Company, Shell Oil Products Company, Shell Pipeline Company, Equilon Enterprises LLC, Equilon Pipeline Company, Texaco Refining & Marketing, Inc. (collectively, "Shell"), Exxon Mobil Corporation, a New Jersey Corporation ("XOM"), Chevron U.S.A. Inc., a Pennsylvania corporation, and its parent, ChevronTexaco Corporation, a Delaware corporation (collectively Chevron U.S.A. Inc. and ChevronTexaco Corporation are referred to as "CVX"), Thrifty Oil Co., a California corporation ("TOC"), Best California Gas, Ltd., a California limited partnership ("Best"), and the City of Santa Monica ("COSM"), on its own behalf and as assignee of claims of the Southern California Water Company ("SCWC") pursuant to the provisions and conditions of the agreement between COSM and SCWC attached hereto as Exhibit "A" ("Assignment Agreement"), regarding the settlement of all claims between them in the litigation captioned: (a) City of Santa Monica v. Shell Oil Company, et al. Orange County Superior Court Case No. 01-CC-04331; and (b) Southern California Water Company v. Shell Oil Company et al., Orange County Superior Court Case No. 02CC11407 now pending before Judge Stephen J. Sundvold in the Orange County Superior Court (collectively, the "Litigation").

### I. RECITALS

1.1 On or about March 19, 2002, COSM and SCWC entered into the Assignment Agreement, pursuant to which COSM obtained an assignment of claims and causes of action of SCWC pursuant to the provisions and conditions contained therein. A copy of the Assignment Agreement between COSM and SCWC has been provided previously to the Settling Defendants (as defined below).

1.2 The parties intend by this Settlement Agreement to:

1.2.1 design, implement and operate a Treatment Facility (as defined below) to address MTBE, TBA, and other Related Petroleum Hydrocarbons (as defined below) to be owned and operated by COSM, to restore an independent, reliable source of drinking water to COSM by restoring to COSM full use of its Charnock Well Field wells. This Treatment Facility

1 is not intended to treat the waters produced by COSM's Arcadia or Olympic well fields;

2 1.2.2 settle and release all of COSM's Claims (as defined below) and, as  
3 permitted by the Assignment Agreement, dismiss with prejudice the Litigation on behalf of  
4 SCWC against the Settling Defendants, TOC, and Best and their respective Affiliates; and

5 1.2.3 provide a basis for equitable settlements with other Defendants to  
6 promote the goals enumerated above.

## 7 **II. DEFINITIONS:**

8 Terms used in this Settlement Agreement shall have the meanings defined below or  
9 as otherwise defined in this Settlement Agreement:

10 2.1 "Affiliate" means, as applied to any Person, any other Person directly or indirectly  
11 controlling, controlled by, or under common control with, that Person.

12 2.2 "Approved Annual Budget" means the annual budget for the construction and/or  
13 maintenance and operation of the Treatment Facility prepared with a reasonable level of detail and  
14 approved by the Engineering Committee pursuant to the applicable provisions of this Settlement  
15 Agreement, including any amendments to the budget by the Engineering Committee.

16 2.3 "Aquifer" means that sub-surface water bearing zone that supplies drinking water  
17 to the Charnock Well Field when the Charnock Well Field is active and operational.

18 2.4 "Arcadia Site" means the property currently owned by COSM located at 1228  
19 South Bundy Drive, Los Angeles and any adjacent property acquired by COSM under the terms of  
20 this Settlement Agreement.

21 2.5 "Bank" means Bank of New York or other financial institution agreed upon by  
22 COSM and Settling Defendants.

23 2.6 "Best Available Technology" means a treatment process as defined by the DHS  
24 pursuant to Section 116370 of the California Health & Safety Code.

25 2.7 "Business Day" means any day other than (i) a Saturday or a Sunday or (ii) a day  
26 on which commercial banks in Los Angeles, California are closed.

27 2.8 "Charnock Well Field" means drinking water supply wells located on property  
28

1 owned by the City of Santa Monica at 11375 Westminister Avenue, Los Angeles, California,  
2 including, but not limited to, COSM production wells 13, 15, 16, 18, and 19, any replacement  
3 wells drilled on that property, plus any drinking water supply wells owned by SCWC that are  
4 subject to the Assignment Agreement.

5 2.9 "Collateral" means all of COSM's rights, title and interest in, to and under the  
6 following:

- 7 (i) the proceeds from the Litigation or the Claims that COSM is  
8 obligated to deposit into the Operating Account pursuant to  
9 the terms of the Settlement Agreement, whether from  
10 judgments or settlement;
- 11 (ii) the Operating Account;
- 12 (iii) the Control Funds (as defined in the Operating Account  
13 Control Agreement);
- 14 (iv) all payments that COSM is required to deposit into the  
15 Operating Account pursuant to the Settlement Agreement  
16 from (a) insurance policies or (b) the Fidelity Bond required  
17 to be maintained by COSM with respect to the Treatment  
18 Facility and the Operating Account pursuant to the  
19 Settlement Agreement; and
- 20 (v) any "proceeds" (as defined in the California Uniform  
21 Commercial Code) of the foregoing.

22  
23 Notwithstanding anything to the contrary set forth herein, "Collateral" does not  
24 include any claim, cause of action, or any chose or thing in action.

25 2.10 "Date of Execution" means the date the City Manager of the COSM signs this  
26 Settlement Agreement.

27 2.11 "Default" means any event or condition which, with the giving of notice or the  
28 lapse of time or both, would, unless cured or waived, become an Event of Default.

1           2.12    "Defendant" means any past, present, or future defendants in the Litigation or any  
2 other litigation involving the Claims.

3           2.13    "DHS" means California Department of Health Services or any successor entity.

4           2.14    "EC Directives" means any direction given or recommendation made by the  
5 Engineering Committee, including, but not limited to, any operating manuals approved by the  
6 Engineering Committee, decisions, orders as instructed or determined by the Engineering  
7 Committee.

8           2.15    "Effective Date" means the date this Agreement is approved by the trial court as a  
9 good faith settlement.

10          2.16    "Encumbrance" means any security interest, pledge, mortgage, lien, charge, adverse  
11 claim of ownership or use, restriction on transfer (such as a right of first refusal or other similar  
12 right), defective title, or other encumbrance of any kind or character.

13          2.17    "Extremely Impaired Source Policy" means the California Department of Health  
14 Services' November 5, 1997 Policy Memo 97-005 Policy Guidance for Direct Domestic Use of  
15 Extremely Impaired Sources and any modified policy or successor policy.

16          2.18    "Facility Site" means that portion of real property on which all or any part of the  
17 Treatment Facility is to be constructed or located pursuant to the terms of this Settlement  
18 Agreement.

19          2.19    "Final Judgment" means a final nonappealable judgment against a Defendant in the  
20 Litigation or any defendants with respect to Claims outside of the Litigation.

21          2.20    "Governmental Authority" means any government, any governmental, quasi-  
22 governmental or regulatory entity, department, commission, board, agency, or instrumentality, and  
23 any court, tribunal, or judicial body, in each case whether federal, state, or local.

24          2.21    "Settling Defendant(s)" means Shell, XOM and/or CVX.

25          2.22    "Investment Grade Rating" means (i) with respect to Standard & Poor's Rating  
26 Group, a division of McGraw-Hill, Inc., a rating of BBB- or higher, or (ii) with respect to Moody's  
27 Investor's Services, Inc., a rating of Baa3 or higher.  
28

1           2.23    "MTBE" means methyl tertiary butyl ether, all products containing said compound,  
2 and its breakdown and degradation products.

3           2.24    "Operating Year" means a 12-month period covered by an Approved Annual  
4 Budget.

5           2.25    "Operations and Maintenance Costs" means the costs of labor, materials, supplies,  
6 and services incurred to replace, regenerate, and dispose of filtration or treatment media and to  
7 inspect, operate, maintain and repair the Treatment Facility.

8           2.26    "Operative Agreements" means, collectively, (i) the Security Agreement, (ii) the  
9 Account Control Agreement, and (iii) each other instrument, certificate, and agreement delivered  
10 pursuant to this Settlement Agreement or the Operative Agreements.

11          2.27    "Permitted Encumbrances" means, those encumbrances as set forth in Exhibit "C".

12          2.28    "Person" means any individual, general or limited partnership, firm, corporation,  
13 limited liability company, association, trust, unincorporated organization or other entity, including  
14 any Governmental Authority.

15          2.29    "Related Petroleum Hydrocarbons" means diisopropyl ether (DIPE), tertiary amyl  
16 methyl ether (TAME), ethyl tertiary butyl ether (ETBE), benzene, toluene, ethyl benzene,  
17 trimethyl benzene, total xylene, and total petroleum hydrocarbons as gasoline (TPHg).

18          2.30    "TBA" means tertiary butyl alcohol.

19          2.31    "Treatment Facility" means a treatment system designed and constructed pursuant  
20 to this Settlement Agreement to remove MTBE, TBA, and Related Petroleum Hydrocarbons from  
21 water produced by the Charnock Well Field from the Aquifer for use and distribution in COSM's  
22 public water supply system. The Treatment Facility may include, but is not limited to, treatment  
23 vessels, the structure on which such vessel(s) is mounted, filtration or treatment media, treatment  
24 equipment, green sand filtration, chlorination equipment, backwash tank, spill containment  
25 facility, any and all associated buildings and equipment, including, but not limited to, monitoring  
26 equipment, valves and instrumentation, conveyance piping, landscaping, fencing, security  
27 facilities, as well as any and all related facilities required by DHS pursuant to its review and/or  
28

1 approval of any operations plan for any such facility or facilities.

### 2 **III. AGREEMENT**

#### 3 **3.1 COURT APPROVAL**

4 3.1.1 Within thirty days of the trial court's order approving this settlement  
5 under Code of Civil Procedure section 877.6 as a good faith settlement, the Settling Defendants,  
6 TOC, and Best shall make the Initial Payments as provided in Paragraph 3.4 below. If the trial  
7 court finds the settlement not to be in good faith, this Settlement Agreement (and all Operative  
8 Agreements) shall be void.

9 3.1.2 If any appellate court (including any court of appeal or supreme court)  
10 or the trial court on remand, reconsideration, or rehearing finds that this settlement does not  
11 constitute a good faith settlement, any party to this Settlement Agreement may, within thirty days  
12 of written notice of such event, declare in writing this Settlement Agreement (and all Operative  
13 Agreements) void. In such event, the parties shall take such steps and execute such documents as  
14 may be required to restore the parties to their respective positions as if this Settlement Agreement  
15 had never been entered into. Upon this Settlement Agreement and the Operative Agreements  
16 becoming void pursuant to the terms hereof, COSM shall within 30 days of such event return the  
17 Initial Payments and the Treatment Facility Payments, if any, to the Settling Defendants, TOC,  
18 and Best. If this Settlement Agreement becomes void pursuant to this Paragraph 3.1.2, then (i) the  
19 Initial Payment repayment obligation shall be a full recourse obligation of COSM, and (ii) the  
20 Treatment Facility Payment repayment obligation shall be a full recourse obligation of COSM and  
21 shall be secured as provided in the Security Agreement. Such repayment obligation of COSM,  
22 and any provisions of this Settlement Agreement and the Operative Agreements necessary to  
23 construe and enforce such obligation, including, without limitation, the Security Agreement and  
24 Paragraph 3.28 ("Alternative Dispute Resolution Process") hereof, shall survive in full force and  
25 effect until such repayments have been made in full notwithstanding that the rest of this Settlement  
26 Agreement and the Operative Agreements shall have been declared void. This Paragraph 3.1.2  
27 does not govern Repayment obligations under any other provisions of this Settlement Agreement.  
28

1                   3.2     **COVENANTS AND UNDERTAKINGS BY COSM**

2                   Prior to the Funding Termination Date, COSM agrees that it will comply with the  
3 following covenants (in addition to its other covenants and obligations contained in this Settlement  
4 Agreement):

5                   3.2.1   Construction And Operation Of Treatment Facilities. Consistent with  
6 the operational requirements of its public water supply system and federal and state requirements,  
7 COSM shall construct and operate the Treatment Facility with Treatment Facility Payments in  
8 accordance with the budgets and design to be established by the Engineering Committee,  
9 including amendments required by law. The goal of this project is to restore to the City use of the  
10 Charnock well field for public drinking water purposes.

11                  3.2.2   Maintenance; Insurance. COSM will keep the Treatment Facility in  
12 good working order and condition, and will maintain, as directed by the Engineering Committee,  
13 with financially sound and reputable insurance companies, insurance on the Treatment Facility  
14 against liabilities regarding the construction and operation of the Treatment Facility and risks as  
15 consistent with coverage maintained by companies of established repute or municipalities engaged  
16 in similar operation, including, but not limited to, fire, extended coverage, public liability,  
17 property damage, and worker's compensation. Without limiting the generality of the foregoing,  
18 the following insurance policies shall be obtained and maintained: (i) a general liability insurance  
19 policy with coverage in the amount of one million dollars (the cost of such insurance policy and  
20 any deductibles shall be Treatment Facility Costs); (ii) a general liability insurance policy with  
21 coverage in the amount of twenty million dollars in excess of the one million dollar insurance  
22 policy set forth above (all costs and deductibles associated with such twenty million dollars  
23 insurance policy shall be the sole responsibility of COSM, and COSM agrees to maintain such  
24 policy as long as the Treatment Facility is in operation); and (iii) if required by the Settling  
25 Defendants, an additional general liability insurance policy providing excess coverage above the  
26 twenty million dollar policy referenced (the cost of such policy and its deductibles shall be  
27 Treatment Facility Costs). COSM shall construct, maintain, and operate the Treatment Facility in  
28



1 compliance with all such insurance policies. All such insurance shall provide that it may not be  
2 canceled or materially modified without 30 days prior written notice to the Settling Defendants.  
3 The Settling Defendants shall be additional named insureds in all policies required pursuant to this  
4 Paragraph 3.2.2. COSM shall cause all contractors retained for the purposes of building,  
5 maintaining, or repairing the Treatment Facility to obtain insurance against risks likely to result  
6 from the type of work contracted, with financially sound and reputable insurance companies and  
7 cause the contractors to name COSM and the Settling Defendants as additional insureds. Such  
8 contractor insurance limits shall be determined and approved by the Engineering Committee. No  
9 insurance required hereunder shall include deductible amounts to which Settling Defendants have  
10 not previously consented in writing. Settling Defendants and COSM shall be named as  
11 indemnitees in Material Contracts (as defined below). Certificates of insurance for the policies  
12 required hereunder (and/or original policies, if required by the Settling Defendants) and copies of  
13 construction contracts awarded under this Settlement Agreement shall be delivered to the Settling  
14 Defendants from time to time upon demand. No less than 30 days prior to the expiration of each  
15 policy, COSM shall deliver to the Settling Defendants evidence of renewal or replacement of such  
16 policy reasonably satisfactory to the Settling Defendants. COSM shall give the Settling  
17 Defendants immediate notice of any casualty to any portion of the Treatment Facility, whether or  
18 not covered by insurance. COSM shall not settle, adjust, or compromise any claim for such  
19 casualty without the prior written approval of the Settling Defendants, which shall not be  
20 unreasonably withheld.

21  
22 3.2.3 Compliance With Laws. COSM will comply with all applicable laws,  
23 ordinances, rules, regulations and requirements of Governmental Authorities related to the design,  
24 construction, operation, and maintenance of the Treatment Facility. COSM shall take all steps  
25 reasonably necessary to insure that the Treatment Facility and Facility Site have all governmental  
26 permits and authorizations necessary in order for its construction, operation and maintenance.

27 3.2.4 Operation of Treatment Facility. COSM shall run the Treatment  
28 Facility in an efficient manner and in accordance with federal and California requirements and an

1 operating manual approved by the Engineering Committee.

2 3.2.5 Maintenance of Records. COSM shall maintain records of costs for  
3 treating the water at the Treatment Facility, including consumption of raw materials and utilities.  
4 Unit treatment costs, measured as dollars per 1000 gallons, shall be reported to the Engineering  
5 Committee on a regular basis.

6 3.2.6 Periodic Reporting. COSM shall prepare a periodic report to the  
7 Engineering Committee detailing any technical problems (e.g., a contaminant other than MTBE,  
8 TBA, or Related Petroleum Hydrocarbons appears in the water being treated) or budgetary  
9 problems (e.g., carbon usage excessive) along with recommended solutions, as appropriate.

10 3.2.7 Inspection Of Property; Books And Records; Audit Rights. COSM  
11 will keep or cause to be kept proper books of record, budget reconciliation records, and accounts  
12 in which full, true, and correct entries shall be made of all dealings and transactions in relation to  
13 the Treatment Facility and the deposits to, and disbursements from, the Operating Account  
14 (defined below), including the Treatment Facility Costs. COSM will permit representatives  
15 appointed by the Settling Defendants at reasonable times and intervals to visit and inspect the  
16 Treatment Facility, to examine and make abstracts from any of its books and records, and to  
17 discuss its affairs, finances and accounts with the Engineering Committee and COSM's employees  
18 and representatives; provided, however, that if COSM shall have outsourced all or any portion of  
19 its accounting, billing, or similar functions to a third party, COSM authorizes that third party to  
20 permit the Settling Defendants or its agents, upon reasonable notice to both COSM and such third  
21 party, at any time during regular business hours and as often as reasonably requested (but not so as  
22 to materially interfere with the business of such third party), to have access to perform inspections  
23 or audits and to respond to the Settling Defendant's request for information concerning any  
24 properties, books, or records of COSM. COSM may (but shall not be required) to be present  
25 during any such inspections or audits of the books and records held by such third party. COSM  
26 shall deliver to such Settling Defendant, in form and substance reasonably satisfactory to it and  
27 within 10 days of its request therefore from time to time, all information relating to the Treatment  
28

1 Facility reasonably required by such Settling Defendant.

2 3.2.8 Prosecution of Litigation. COSM shall use its best efforts to prosecute  
3 its claims in the Litigation against any non-settling Defendants with the goal of achieving the  
4 maximum possible recovery consistent with the evidence.

5 3.2.9 Notice Of Defaults. COSM will promptly give written notice to the  
6 Settling Defendants of the occurrence of any Default or Event of Default by COSM at the earliest  
7 possible date after COSM's discovery of such Default or Event of Default, but in any event no  
8 later than five Business Days following discovery of any such Default or Event of Default, signed  
9 by an authorized representative of COSM setting forth the details of, and the actions that COSM  
10 proposes to take with respect to, such Default or Event of Default. COSM will also promptly give  
11 notice to the Settling Defendants of any pending or threatened action, suit or proceeding, or  
12 adverse decision which could materially and adversely affect construction and/or operations of the  
13 Treatment Facility or which questions the validity of this Settlement Agreement or any Operative  
14 Agreement.

15 3.2.10 Operative Agreements. COSM shall comply with the terms and  
16 covenants of each of the Operative Agreements to which it is a party. COSM shall not amend,  
17 modify or terminate, or agree to amend, modify, or terminate, any of the Operative Agreements  
18 without the prior written consent of Settling Defendants, except as permitted in this Settlement  
19 Agreement.

20 3.2.11 Use Of Proceeds. COSM shall use the proceeds of the Operating  
21 Account in accordance with the terms of this Settlement Agreement and all relevant EC  
22 Directives. COSM shall make all payments to third parties reasonably promptly in accordance  
23 with all EC Directives.

24 3.2.12 No Sale. COSM shall not sell, or otherwise dispose of, transfer to a  
25 third party or encumber, or permit the imposition of any Encumbrance (other than Permitted  
26 Encumbrances) on, all or any part of the Treatment Facility, the Facility Site, any Collateral, the  
27 Litigation, or the Claims, except as expressly permitted by this Settlement Agreement or the  
28

1 Operative Agreements.

2 3.2.13 Payments Of Taxes. When required by law, COSM shall pay and  
3 discharge promptly all taxes, assessments, and governmental charges or levies imposed upon it,  
4 the Facility Site and the Treatment Facility. Subject to Paragraph 3.21 taxes paid by COSM for  
5 the Treatment Facility shall be a Treatment Facility Cost (as defined below).

6 3.2.14 Condemnation; Casualty. Upon learning of the institution or  
7 threatened institution of any proceeding for the condemnation or other taking for public or quasi-  
8 public use of any portion of the Facility Site or Treatment Facility, COSM shall immediately  
9 notify the Engineering Committee and the Settling Defendants in writing, together with copies of  
10 all applicable documents. COSM shall take action reasonably required to enable the Settling  
11 Defendants to have standing and to participate in any such proceeding and be represented therein  
12 by counsel of its choice. In the event of a condemnation or other taking for public or quasi-public  
13 use of any portion of the Facility Site or Treatment Facility, COSM shall have the obligation to  
14 rebuild the Treatment Facility in accordance with applicable EC Directives and locate alternate  
15 Facility Sites pursuant to the EC Directives. In event of casualty COSM shall have the obligation  
16 to rebuild the Treatment Facility in accordance with the applicable EC Directives and as part of  
17 the approved Annual Budget.

18 3.2.15 No Condemnation Of Treatment Facility And Facility Site. COSM  
19 shall not condemn or cause to be condemned all or any part of the Facility Site or Treatment  
20 Facility for any purpose.

21 3.2.16 Transfer Of Ownership Of Property. In the event that title to any  
22 property vests in the Settling Defendants pursuant to Paragraph 3.7.5 COSM agrees that it shall  
23 take all customary and reasonable actions, including entering into customary transfer documents  
24 and obtaining title insurance, to effect such transfer and vest the undivided ownership of such  
25 property in the Settling Defendants free and clear of all Encumbrances (other than Permitted  
26 Encumbrances).

27 3.2.17 Fidelity Bond. COSM shall maintain a fidelity bond in the form  
28

1 attached hereto as Exhibit "D" (the "Fidelity Bond") and shall cause Settling Defendants to be  
2 named as additional insureds.

### 3 **3.3 COVENANTS AND UNDERTAKINGS OF SETTLING DEFENDANTS**

4 Prior to the Funding Termination Date, each of the Settling Defendants agrees that  
5 it will comply with the following covenants (in addition to its other covenants and obligations  
6 contained in this Settlement Agreement):

7 3.3.1 Payments. It shall promptly make all of its Initial Payments and  
8 Treatment Facility Payments as required by this Settlement Agreement.

9 3.3.2 Restoring Public Water System. Consistent with the terms of this  
10 Settlement Agreement, it shall cooperate with COSM to expedite the achievement of the goals of  
11 designing, building, operating and maintaining the Treatment Facility, and restoring COSM's use  
12 of the Charnock Well Field in its public water supply system.

13 3.3.3 Notice of Defaults. It will promptly give written notice to COSM of  
14 the occurrence of any Default or Event of Default by it at the earliest possible date after the  
15 discovery of such Default or Event of Default by it, but in any event no later than five Business  
16 Days following discovery of any such Default or Event of Default, signed by its authorized  
17 representative. The notice shall set forth the details of the asserted Default or Event of Default,  
18 and the actions that it proposes to take with respect to such Default or Event of Default. It will  
19 also promptly give notice to COSM of any pending or threatened action, suit or proceeding, or  
20 adverse decision which could materially and adversely affect construction and/or operations of the  
21 Treatment Facility, or the ability of it to effect any Initial Payment or Treatment Facility Payment,  
22 or which questions the validity of this Settlement Agreement or any Operative Agreement.

23 3.3.4 Operative Agreements. It shall comply with the terms and covenants  
24 of each of the Operative Agreements to which it is a party. It shall not amend, modify or  
25 terminate, or agree to amend, modify or terminate, any of the Operative Agreements without the  
26 prior written consent of COSM, except as permitted in this Settlement Agreement.

27 3.3.5 Maintenance of Records/Periodic Reporting. It shall maintain records  
28

1 of all Treatment Facility Payments made to the Operating Account by it and shall provide to  
2 COSM a summary thereof annually.

3 3.3.6 No Encumbrances. It shall neither create nor maintain any  
4 encumbrances on any COSM property, except as contemplated by this Settlement Agreement or  
5 the Operative Agreements or pursuant to the enforcement of its rights under this Settlement  
6 Agreement or the Operative Agreements.

7 3.3.7 COSM's Right of First Refusal. In the event that title to any property  
8 vests in the Settling Defendants pursuant to Paragraph 3.7.5, the Settling Defendants shall offer  
9 COSM a customary right of first refusal to repurchase such property.

10 3.3.8 Compliance With Laws. Settling Defendants will direct their  
11 Representative on the Engineering Committee to use best efforts (i) to ensure that the Treatment  
12 Facility complies with all applicable laws, ordinances, rules, regulations, and requirements of  
13 Governmental Authorities related to the design, construction, operation, and maintenance of the  
14 Treatment Facility and (ii) to take all steps reasonably necessary to ensure that the Treatment  
15 Facility and Facility Site have all governmental permits and authorizations necessary in order for  
16 its construction, operation, and maintenance.

17 3.3.9 Actions On Collateral. Settling Defendants shall give no instructions  
18 to the Bank and take no actions with respect to the Operating Account except as permitted by this  
19 Settlement Agreement and the Operative Agreements.

20 3.3.10 Actions On Liens. Settling Defendants shall not seek to enforce any  
21 rights under the lien granted in Paragraph 3.17 except under the circumstances allowed by this  
22 Settlement Agreement.

### 23 3.4 INITIAL PAYMENTS

24 3.4.1 The Initial Payments as required by Paragraph 3.1.1 shall be:

25 (A) By and on behalf of XOM: \$10 million within 30 days of the  
26 Trial Court's good faith approval of this settlement.

27 (B) By and on behalf of CVX, TOC, and Best: \$20 million within  
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30 days of the Trial Court's good faith approval of this settlement.

(C) By and on behalf of Shell: \$62.5 million within 30 days of the Trial Court's good faith approval of this settlement, to be disbursed as follows:

1. \$32.5 million to COSM immediately upon payment;
2. \$30 million to be placed in an escrow account, to be further disbursed to COSM as follows:
  - i. \$10 million, five (5) business days after COSM provides notice and documentation to Shell that COSM has executed the construction contract for the Treatment Facility;
  - ii. \$10 million, five (5) business days after COSM provides notice and documentation to Shell that (1) DHS has issued a permit to allowing delivery of drinking water from the Treatment Facility and (2) COSM has commenced delivery of drinking water from the Treatment Facility such that Shell is no longer paying for replacement water;
  - iii. \$10 million at the Funding Termination Date.
  - iv. If Shell disagrees with COSM that the conditions for disbursement have been achieved and provides notice to COSM within the notice period, the matter shall be referred to arbitration under Paragraph 3.28.
  - v. COSM may invest the funds placed in escrow pursuant to this sub-paragraph (C) as COSM sees fit. COSM shall have full access to interest on these funds as such interest accrues; the principal amounts



1 described in subparagraph (C)(2) shall be available to  
2 COSM only when the respective payment milestones  
3 are achieved. COSM is responsible for payment of  
4 taxes, if any, on interest earned. Settling Defendants  
5 shall not be liable for any losses of principal amounts  
6 in the escrow account.

7 3.4.2 The Initial Payments are non-refundable, except as provided in  
8 Paragraph 3.1 above, are not required to be deposited in the Operating Account, and may be used  
9 by COSM in any manner as COSM in its sole and absolute discretion sees fit.

### 10 3.5 COSM'S RELEASE OF CLAIMS

11 Upon payment of the Initial Payments, the following release of claims shall be in  
12 full force and effect:

13 3.5.1 Except for the exclusions expressly set forth in Paragraph 3.5.3 below,  
14 COSM, individually and as an assignee of SCWC, releases and forever discharges Shell Oil  
15 Company, Shell Oil Products Company, Shell Pipeline Company, Equilon Enterprises LLC,  
16 Texaco Refining and Marketing, Inc, Exxon Mobil Corporation, ExxonMobil Oil Corporation,  
17 ChevronTexaco Corporation, Chevron Corporation, Chevron U.S.A. Inc, Chevron Products  
18 Company, Texaco Inc., TOC, and Best, and each of them, and each of their respective Related  
19 Persons (as defined below) (collectively, the "Released Parties"), of and from all Claims (as  
20 defined below); provided, however, that any Related Person who is a current Defendant and is not  
21 a Settling Defendant, TOC or Best, is not released from any Claims by this Settlement Agreement.  
22 Under no circumstances shall this Settlement Agreement release any Claims against, or benefit,  
23 any non-settling Defendants. For purposes of this paragraph, "Related Persons" means, with  
24 respect to the Settling Defendants, TOC and Best, officers, employees, directors, partners,  
25 shareholders, agents, accountants, attorneys, insurance carriers, sureties, representatives,  
26 independent contractors, consultants, advisors, predecessors-in-interest, successors-in-interest,  
27 parents, joint ventures (but not including any joint ventures with non-settling Defendants),  
28



1 subsidiaries, Affiliates, franchisee owners and operators of retail gasoline service stations and  
2 property owners and lessors of retail gasoline service station sites located within a one and one-  
3 half mile radius of the Charnock Well Field, both past and present.

4 3.5.2 For purposes of this Settlement Agreement, "Claims" mean any and all  
5 demands, actions, causes of action, suits, obligations, assessments, damages (including, without  
6 limitation, diminution-in-value; stigma; property damage; lost enjoyment or use; lost profits; and  
7 punitive or exemplary damages), liabilities, investigation costs, remediation costs, restoration  
8 costs, other costs, losses, or expenses (including attorneys' fees and expert witness fees) of any  
9 kind or nature whatsoever (whether legal or equitable, past, present or future, ascertained or  
10 unascertained, known or unknown, suspected or unsuspected whether based in tort, contract, or  
11 any local, state or federal law, common law, statute, ordinance, or regulation), arising out of,  
12 relating to, or resulting from: (i) actual or threatened contamination of the Charnock Well Field  
13 from MTBE, TBA, and/or Related Petroleum Hydrocarbons manufactured, sold, marketed, stored,  
14 refined, supplied, distributed, exchanged, or discharged by the Released Parties, including any  
15 such actual or threatened contamination of the Charnock Well Field resulting from any future  
16 release that is not a "Subsequent Release" as described in Paragraph 3.18 ("Subsequent Releases")  
17 below; (ii) COSM's investigation and/or remediation of any such actual or threatened  
18 ~~contamination, and any other action by COSM arising out of, relating to, or resulting from such~~  
19 ~~actual or threatened contamination; and/or (iii) any fact or circumstance that has or could have~~  
20 ~~been raised by COSM and/or SCWC as part of the Litigation against the Released Parties. In~~  
21 ~~addition, Claims shall include all claims, rights and causes of action assigned to COSM against the~~  
22 ~~Released Parties pursuant to the provisions and conditions of the Assignment Agreement.~~

23 3.5.3 Excluded from the Claims released by COSM in this Settlement  
24 Agreement are:

25 3.5.3.1 any "Subsequent Release", as described in Paragraph 3.18  
26 ("Subsequent Releases") below;  
27  
28

1                   3.5.3.2 any lawsuits brought by third parties against COSM or SCWC  
2 claiming personal injury and/or damage to property owned by that party arising out of the delivery  
3 of drinking water contaminated by MTBE, TBA, and/or Related Petroleum Hydrocarbons;

4                   3.5.3.3 any and all obligations of any of the Released Parties under this  
5 Settlement Agreement and any Operative Agreements; and

6                   3.5.3.4 any claim, right or cause of action of SCWC not assigned to  
7 COSM pursuant to the provisions and conditions of the Assignment Agreement.

8                   **3.6     SETTLING DEFENDANTS' RELEASE OF CLAIMS**

9                   3.6.1 Except for any and all obligations of COSM under this Settlement  
10 Agreement, and Operative Agreements, the Settling Defendants, Best, and TOC hereby release  
11 and forever discharge COSM individually and as assignee of SCWC under the Assignment  
12 Agreement and COSM's officers, employees, directors, partners, shareholders, parent companies,  
13 subsidiaries, agents, accountants, attorneys, insurance carriers, sureties, representatives,  
14 consultants, advisors, predecessors in interest, and successors in interest (collectively, the  
15 "COSM/SCWC Released Parties"), of and from any claims that have been or could have been  
16 asserted in the Litigation against COSM individually and/or as assignee of SCWC. Under no  
17 circumstances shall this Settlement Agreement release any claims against, or benefit, any non-  
18 settling Defendants.

19                   3.6.2 CVX releases COSM and SCWC from any claims CVX has against  
20 SCWC arising from any claim or allegation related to any payment made to SCWC by CVX under  
21 the terms of the agreement entered into between SCWC, Chevron Products Company, and Shell  
22 Oil Products Company dated February 24, 1998, or under any other order or obligation of any  
23 kind arising from or related to water replacement costs.

24                   3.6.3 Shell, CVX, XOM, TOC and Best, on behalf of themselves and  
25 their respective Released Parties (as defined in Paragraph 3.5.1 above), hereby release and  
26 forever discharge each other from all Claims (as defined in Paragraph 3.5.3 above). Shell  
27 shall promptly after the Effective Date dismiss with prejudice its Cross-Complaint against  
28

1 CVX, XOM, TOC and Best. This release shall not apply to any suit that may hereafter be  
2 filed by a person or entity that is not a party to the Litigation, other than a governmental  
3 entity, for property damage or personal injury. This release shall not affect any rights or  
4 obligations of the Settling Defendants under this Settlement Agreement or other  
5 agreements related hereto.

### 6 3.7 TREATMENT FACILITY COSTS

7 During the term of this Settlement Agreement and included as part of the Approved  
8 Annual Budget the Settling Defendants will fund, by Treatment Facility Payments, the "Treatment  
9 Facility Costs." "Treatment Facility Costs" shall mean the full reasonable costs of remediating  
10 MTBE, TBA, and/or Related Petroleum Hydrocarbons in the water produced from COSM's  
11 Charnock Well Field from releases of gasoline, including, but not limited to:

12 3.7.1 the full reasonable costs of design and construction of the Treatment  
13 Facility, including, but not limited to:

14 3.7.1.1 any pilot tests for the evaluation of treatment processes;

15 3.7.1.2 professional services to prepare plans and specifications used to  
16 solicit bids for construction projects;

17 3.7.1.3 construction management services;

18 3.7.1.4 amounts due under approved construction contract(s) and any  
19 approved change orders;

20 3.7.1.5 conveyance piping costs to support the Treatment Facility;

21 3.7.1.6 necessary demolition/reconstruction costs;

22 3.7.1.7 permitting costs and mitigation measures as required by the  
23 permitting process (including operational plans for Treatment Facility, environmental impact and  
24 assessment reports [including public participation costs], construction permits, and associated  
25 professional services);

26 3.7.1.8 any needed modifications or additions to existing water treatment  
27 equipment or processes to assure adequate treatment;  
28

1                   3.7.1.9 any facilities or processes needed to dispose of treated water that  
2 cannot be delivered to customers pending the approval of the DHS;

3                   3.7.1.10 any and all other costs incurred to comply with California or  
4 federal requirements for the Treatment Facility; and

5                   3.7.1.11 cost of insurance for design and construction of the Treatment  
6 Facility.

7                   3.7.2 the full reasonable costs of operating and maintaining the Treatment  
8 Facility, including, but not limited to:

9                   3.7.2.1 labor, power, chemical and analytical costs;

10                  3.7.2.2 costs for treatment media replacement and disposal, and vessel  
11 repairs or replacements, regeneration of treatment media (if required) as incurred;

12                  3.7.2.3 costs associated with equipment repair and replacement;

13                  3.7.2.4 all costs related to compliance with California operating permit  
14 requirements, and/or the Extremely Impaired Source Policy;

15                  3.7.2.5 the cost of operating and maintaining any modifications or  
16 additions to water treatment and processes for Aquifer water; and

17                  3.7.2.6 cost of insurance for the operation and maintenance of Treatment  
18 Facility.

19                  3.7.3 an annual fee to cover internal charges of COSM, including but not  
20 limited to, access fees for the use of COSM property and salary of COSM employees overseeing  
21 the Treatment Facility and participating on the Engineering Committee. This fee shall be Five  
22 Hundred Thousand Dollars (\$500,000) per Operating Year from the date of this Agreement until  
23 drinking water is delivered from the Treatment Facility. After drinking water is delivered from the  
24 Treatment Facility, the fee shall be Three Hundred Thousand Dollars (\$300,000) per Operating  
25 Year until the Funding Termination Date. Payments under this sub-paragraph 3.7.3 shall be pro  
26 rated as appropriate.  
27  
28

1                   3.7.4 Legal and expert costs paid to third parties reasonably necessary  
2 to permit or construct, operate, or maintain the Treatment Facility.

3                   3.7.5 If additional or alternative real property is needed for the  
4 Treatment Facility, then the Settling Defendants will fund costs of acquisition (including  
5 any eminent domain costs). If COSM continues to use such property for treatment of  
6 water after the Funding Termination Date, then COSM will pay a reasonable rent to  
7 Settling Defendants until such use ceases, and when COSM ceases using the real property  
8 for water treatment, COSM shall deliver a quitclaim deed on an undivided basis in the  
9 Settling Defendants as permitted by state or federal law; provided that if not so permitted,  
10 COSM shall reimburse such acquisition costs.

11                   3.7.6 replacement water, including:

12                         3.7.6.1 future unreimbursed costs for such water from the Charnock Well  
13 Field. Nothing in this Settlement Agreement, however, is intended to relieve any non-settling  
14 Defendant of its obligations under existing or future EPA orders and/or RWQCB orders;

15                         3.7.6.2 should decisions of the Engineering Committee require that the  
16 Arcadia and/or Olympic well(s) be removed from service, the Settling Defendants shall supply  
17 replacement water until these wells are returned to service;

18                         3.7.6.3 future costs of replacement water if, through no fault of COSM, the  
19 quantity of water delivered from the Treatment Facility is diminished. In such case the Settling  
20 Defendants will pay the costs of replacing the diminished flow. In no event will Settling  
21 Defendants be required to pay for replacement water due to diminished yield from the Aquifer due  
22 to natural causes.

23                   3.7.7 any other costs incurred pursuant to Paragraph 3.11 ("Alternative  
24 Technology or Remedies"), subject to the limits provided in Paragraph 3.11.2.

25                   3.7.8 fees and expenses payable to the Bank for administration of the  
26 Operating Account.

27                   3.7.9 any costs to fund the reconstruction of the Treatment Facility in the  
28

1 event of casualty to, or condemnation or other taking for public or quasi-public use of, the  
2 Treatment Facility or any portion thereof that are not reimbursed by insurance proceeds or  
3 condemnation/taking awards.

4 3.7.10 Settling Defendants shall have the right to seek ADR pursuant to  
5 Paragraph 3.28 ("Alternative Dispute Resolution Process") if they contend that COSM has  
6 incurred or will incur unreasonable Treatment Facility Costs.

7 **3.8 RELEASE PREVENTION**

8 XOM and Best shall record deed/use restrictions substantially in the form of  
9 Exhibit "E" with respect to the following properties owned by them within the immediate vicinity  
10 of the Charnock Well Field to avoid future contamination problems for the Charnock Well Field:  
11 3505 South Sepulveda Boulevard, Los Angeles, California (Best) and 3800 South Sepulveda  
12 Boulevard, Los Angeles, California (XOM).

13 **3.9 OPERATIONAL REQUIREMENTS**

14 COSM shall own and operate the Treatment Facility, and shall be responsible for  
15 the Treatment Facility activation, staffing, maintenance and performance monitoring. COSM  
16 retains the right to make all operational decisions concerning the Charnock Well Field and the  
17 Treatment Facility. The Settling Defendants specifically acknowledge that COSM has the right  
18 and obligation to operate the Charnock Well Field and the Treatment Facility in a manner that:

19 3.9.1 preserves COSM's water rights;

20 3.9.2 satisfies the water quality and water quantity requirements of COSM;

21 3.9.3 assures a safe and reliable supply of water to COSM's customers; and

22 3.9.4 is consistent with the reasonable management objectives of COSM in  
23 the management of its water system.

24 **3.10 FEDERAL AND STATE REQUIREMENTS**

25 3.10.1 All design, construction, operation, and maintenance of the Treatment  
26 Facility shall comply with applicable federal and California requirements.

27 3.10.2 DHS currently reviews and approves operating plans for all public  
28

1 water treatment systems. Subject to Paragraph 3.24 ("Communications with DHS") below, to the  
2 extent DHS, or any other state or federal regulatory agency, requires COSM to install any  
3 equipment or facilities or to provide any services for the operation or maintenance of the  
4 Treatment Facility in connection with the treatment of MTBE, TBA, and Related Petroleum  
5 Hydrocarbons prior to the Funding Termination Date, the Settling Defendants shall bear the cost  
6 (which shall be a Treatment Facility Cost) of complying with those requirements through  
7 Treatment Facility Payments. Notwithstanding any other provisions set forth herein, the Settling  
8 Defendants reserve their rights to protest, by administrative procedures or judicial action, as  
9 appropriate, the imposition of any federal or California requirements. Should the Settling  
10 Defendants exercise such right of protest, COSM agrees to cooperate by providing non-privileged  
11 documents or other non-privileged information reasonably required.

### 12 3.11 ALTERNATIVE TECHNOLOGY OR REMEDIES

13 3.11.1 If a new Best Available Technology for MTBE, TBA, or Related  
14 Petroleum Hydrocarbons is approved by DHS, or its successor entity, the Settling Defendants may  
15 elect to implement that technology. The parties to this Settlement Agreement shall meet and  
16 confer to determine if COSM should employ that technology. Settling Defendants must agree to  
17 advance Treatment Facility Costs to pay the actual cost of installing any new technology pursuant  
18 to this paragraph.

19 3.11.2 COSM may elect to implement alternative remedies for MTBE or  
20 TBA. If COSM elects to implement an alternative remedy, Settling Defendants will only be  
21 obligated to advance Treatment Facility Costs to pay the lesser of either: (a) the capital and  
22 Operations and Maintenance Costs of the alternative remedy, or (b) the capital and Operations and  
23 Maintenance Costs for the existing facility.

24 3.11.3 If DHS directs COSM that modifications or additions to the Treatment  
25 Facility for the Charnock wells are required, Settling Defendants will advance such Treatment  
26 Facility Costs to pay the costs of complying with such requirements.

27 3.11.4 The activities set forth in this Paragraph are subject to approval by  
28



1 COSM and the Settling Defendants; said approval will not be unreasonably withheld. COSM has  
2 the right to reject the proposed installation of new treatment technology if the use of such  
3 technology is inconsistent with the operational requirements of its water system.

#### 4 3.12 OTHER SETTLEMENTS AND PROCEEDS

5 3.12.1 Settlements entered into by COSM with any Defendant other than the  
6 Settling Defendants shall be referred to as "Other Settlements."

7 3.12.2 Proceeds from Other Settlements shall be allocated between COSM  
8 and the Operating Account pursuant to Paragraph 3.12.3. COSM's share of these proceeds is non-  
9 refundable, is not required to be deposited in the Operating Account, and may be used by COSM  
10 in any manner as COSM in its sole and absolute discretion sees fit.

11 3.12.3 The sum of any and all proceeds from Other Settlements and Final  
12 Judgments in the Litigation against any Defendants ("Total Proceeds") shall be allocated between  
13 COSM and the Operating Account as follows:

14 3.12.3.1 Total Proceeds up to \$40 million, first \$18 million to Operating  
15 Account and remaining \$22 million to COSM;

16 3.12.3.2 Total Proceeds equal to or greater than \$40 million, 10% to the  
17 Operating Account and 90% to COSM.

18 3.12.3.3 ~~Proceeds from Other Settlements and Final Judgments~~ shall be  
19 allocated between COSM and the Operating Account, and COSM shall deposit into the Operating  
20 Account the Operating Account's share of such Proceeds, within 30 days of court approval of this  
21 Settlement, or of receipt of such funds by COSM, whichever is later.

22 3.12.4 First one million dollars of any settlement with Unocal will be paid by  
23 COSM to Shell within 30 days of court approval of this Settlement, or receipt by COSM,  
24 whichever is later, remainder to COSM or Operating Account as set out in this Paragraph 3.12.

25 3.12.5 COSM's share of proceeds from any Other Settlement and any Final  
26 Judgments is non-refundable, is not required to be deposited in the Operating Account, and may  
27 be used by COSM in any manner as COSM in its sole and absolute discretion sees fit.  
28



1                   **3.13 TREATMENT FACILITY PAYMENTS**

2                   3.13.1 Obligation to Fund Treatment Facility Costs. Until the Funding  
3 Termination Date, the Settling Defendants shall fund, in accordance with the terms and conditions  
4 of this Settlement Agreement, the Treatment Facility Costs according to the percentages in  
5 Paragraph 3.16. Each such funding by a Settling Defendant (a "Treatment Facility Payment")  
6 shall be made to the Operating Account at such times and in such amounts as required pursuant to  
7 Paragraph 3.13.2 below. Each Treatment Facility Payment shall be reflected on Schedule 3.13  
8 hereto which will be amended by the Settling Defendants as each Treatment Facility Payment is  
9 made to reflect such Treatment Facility Payment and the other information required by such  
10 Schedule. All Treatment Facility Payments shall be made to the Operating Account by wire  
11 transfer of immediately available funds pursuant to the wiring instructions provided by the Bank  
12 in writing.

13                   3.13.2 Timing and Amount of Treatment Facility Payment.

14                   3.13.2.1 Until the Funding Termination Date, each Settling Defendant  
15 shall be obligated to make Treatment Facility Payments to the Operating Account. All Treatment  
16 Facility Payments shall be made into the Operating Account within 30 days of (i) written notice  
17 from the Engineering Committee pursuant to the terms hereof (a "Notice of Treatment Facility  
18 Payment") or (ii) a decision rendered by the arbitrator pursuant to Paragraph 3.28 ("Alternative  
19 Dispute Resolution Process").

20                   3.13.2.2 Until the Funding Termination Date, each Settling Defendant  
21 shall, on an annual basis, make Treatment Facility Payments requested by the Engineering  
22 Committee in a Notice of Treatment Facility Payment in order that the balance of the Operating  
23 Account is 110% of the most recent Approved Annual Budget (an "Annual Treatment Facility  
24 Payment"). Settling Defendants shall not be required to make a Treatment Facility Payment until  
25 the balance in the Operating Account drops below 110% of the most recent Approved Annual  
26 Budget.

27                   3.13.2.3 Until the Funding Termination Date, if during an Operating Year  
28

1 the Engineering Committee determines that the funds then available in the Operating Account are  
2 insufficient to fund the projected Treatment Facility Costs for the balance of such Operating Year,  
3 it shall determine the amount required to fund the projected Treatment Facility Costs through the  
4 end of that Operating Year, and each Settling Defendant shall make the Treatment Facility  
5 Payment requested by the Engineering Committee in a Notice of Treatment Facility Payment (a  
6 "Special Treatment Facility Payment"). The aggregate amount of such Treatment Facility  
7 Payments shall be sufficient to increase the balance in the Operating Account to 110% of such  
8 projected Treatment Facility Costs then remaining unpaid.

9 3.13.2.4 Each Settling Defendant may make any Treatment Facility  
10 Payment due but not made by another Settling Defendant within 30 days of written notice by  
11 COSM that a Settling Defendant has not made a Treatment Facility Payment due. Nothing  
12 contained in this paragraph shall release any Settling Defendant from its obligation to make  
13 Treatment Facility Payments pursuant to this Settlement Agreement.

### 14 3.14 OPERATING ACCOUNT

15 3.14.1 Establishment. COSM shall establish an account (the "Operating  
16 Account") with, and to be administered, by the Bank. The parties to this Settlement Agreement  
17 shall enter into an agreement substantially in the form attached hereto as Exhibit "F" (the  
18 "Account Control Agreement").

#### 19 3.14.2 Funding.

20 3.14.2.1 The following funds shall be deposited in the Operating Account:

21 3.14.2.1.1 Treatment Facility Payments;

22 3.14.2.1.2 Portions of other settlements in accordance with  
23 Paragraph 3.12 ("Other Settlements and Proceeds") of this Settlement Agreement;

24 3.14.2.1.3 Portions of the amounts received by COSM in  
25 satisfaction of Final Judgments in the Litigation against any Defendants as set forth in Paragraph  
26 3.12 ("Other Settlements and Proceeds");

27 3.14.2.1.4 any and all insurance proceeds for damage to the  
28

1 Treatment Facility and/or condemnation awards for the Treatment Facility other than as properly  
2 paid for necessary repairs or replacements in accordance with applicable Engineering Committee  
3 Directives; and

4 3.14.2.1.5 any and all proceeds paid under the Fidelity Bond  
5 with respect to the Operating Account or the Treatment Facility.

6 3.14.2.2 If and when COSM receives any such Treatment Facility  
7 Payments, settlements, judgments, and/or insurance proceeds directly, it shall promptly deposit  
8 them into the Operating Account and in any event no later than three Business Days following its  
9 receipt thereof.

10 3.14.2.3 COSM shall maintain records (including invoices) for all costs  
11 incurred pursuant to this Settlement Agreement and shall make them available upon reasonable  
12 request and notice to the Settling Defendants.

13 3.14.2.4 COSM shall solicit bids and award contracts for the scope of  
14 work approved for the then-current budget year consistent with legal requirements applicable to  
15 COSM's bidding process set forth in the City Charter and Municipal Code.

16 3.14.2.5 Disbursements From Operating Account.

17 3.14.2.5.1 Prior to the Funding Termination Date, and subject to  
18 the terms of the Operative Agreements, Treatment Facility Costs shall be paid from the Operating  
19 Account as follows:

20 (a) Payments under \$3,000,000 (other than to COSM or any instrumentality  
21 thereof) authorized pursuant to an Approved Annual Budget or a contract approved by the  
22 Engineering Committee, may be authorized solely by COSM; and

23 (b) Payments (i) over \$3,000,000, (ii) to COSM or any instrumentality thereof, or  
24 (iii) that are not authorized pursuant to an Approved Annual Budget or contract approved by the  
25 Engineering Committee, must be approved in writing by COSM and the Engineering Committee  
26 representative of the Settling Defendants.  
27

28 3.14.2.5.2 No payments shall be made from the Operating

1 Account after the Funding Termination Date for Treatment Facility Costs, except payments to  
2 contractors for materials or services rendered prior to the Funding Termination Date ("Wind Down  
3 Payments"). All funds net of the Wind Down Payments remaining in the Operating Account after  
4 the Funding Termination Date, plus all funds deposited therein after such date, shall be held  
5 therein until all payments required under this Settlement Agreement are made. Any amounts  
6 remaining in the Operating Account after such payments are made shall be returned to Settling  
7 Defendants. The Operating Account shall remain in existence until the Wind Down Payments and  
8 payments pursuant to this Settlement Agreement are made.

9 3.14.3 Additional Sources Of Reimbursement. Nothing in this Settlement  
10 Agreement restricts COSM from seeking damages from non-settling Defendants for expenses that  
11 are either not reimbursable under this Settlement Agreement, or expenses that have been  
12 determined to be non-reimbursable pursuant to Paragraph 3.28 ("Alternative Dispute Resolution  
13 Process").

#### 14 3.15 **FUNDING TERMINATION DATE**

15 All obligations of the Settling Defendants under this Settlement Agreement cease  
16 upon the first to occur of the following events (the "Funding Termination Date"):

17 3.15.1 DHS's approval to terminate treatment for MTBE, TBA, and Related  
18 Petroleum Hydrocarbons at the Treatment Facility; or

19 3.15.2 written agreement of COSM and the Settling Defendants; or

20 3.15.3 the termination date set by a determination of the Engineering  
21 Committee or an arbitrator's decision pursuant to Paragraph 3.18 ("Subsequent Releases"); or

22 3.15.4 the occurrence of a Fundamental Event of Default by COSM or the  
23 voiding of this Settlement Agreement pursuant to Paragraph 3.1.2; or

24 3.15.5 COSM's election to terminate the Settling Defendants' obligations to  
25 make Treatment Facility Payments hereunder following a dispositive settlement of the Litigation  
26 or satisfaction of a Final Judgment; or

27 3.15.6 COSM declines to apply to DHS for approval to terminate treatment  
28

1 for MTBE, TBA, and Related Petroleum Hydrocarbons at the Treatment Facility following receipt  
2 of an EC recommendation pursuant to Paragraph 3.20.7.15 or an arbitrator's order related thereto.

3 **3.16 REFUND OF EXCESS TREATMENT FACILITY COSTS**

4 Within 30 days after the Wind Down Payments are made, the funds remaining in  
5 the Operating Account shall be refunded to the Settling Defendants. Settling Defendants' shares in  
6 the funds remaining in the Operating Account shall be conclusively presumed to be:

7 Shell 70%

8 CVX 20%

9 XOM 10%.

10  
11 **3.17 SECURITY AGREEMENT/LIMITED RECOURSE/LIEN.**

12 3.17.1 Security Interest. COSM's obligations under Section 3.14.2.5.2 of this  
13 Settlement Agreement to cause amounts to be paid out of the Operating Account for Wind Down  
14 Payments and to return any remaining amounts in the Operating Account to the Settling  
15 Defendants shall be secured by a security interest in the Collateral as set forth in a Security  
16 Agreement among COSM and the Settling Defendants in substantially the form of Exhibit "G".

17 3.17.2 Lien. To secure COSM's timely and full performance of its  
18 obligations in this Agreement to deposit funds into the Operating Account, including pursuant to  
19 Section 3.12 above, COSM hereby grants to the Settling Defendants a continuing lien, which may  
20 be perfected as a security interest (referred to as "Lien"), subordinate to the lien of COSM's  
21 Attorneys' Fees, in 100 percent of the proceeds of settlements received from Defendants and 100  
22 percent of amounts received by COSM (less COSM's Attorneys' Fees and COSM's Litigation  
23 Costs) in satisfaction of any Final Judgment against a Defendant; provided, that once \$18 million  
24 has been deposited in the Operating Account from proceeds from such settlements and judgments,  
25 the Lien will be limited to 10% of such proceeds in excess of \$40 million. The Lien shall expire  
26 upon COSM's deposit into the Operating Account of all of the proceeds of settlements or Final  
27 Judgments in the Litigation as required by this Settlement Agreement. Nothing contained herein  
28

1 shall be interpreted to confer any rights, ownership, lien, assignment, ownership, control, or  
2 security interest in the Litigation or Claims to the Settling Defendants, and nothing contained  
3 herein shall be construed as an assignment or transfer of rights or ownership of claims to the  
4 Litigation or Claims, or of the right to bring, assume, or otherwise exercise any manner of  
5 dominion or control over the Litigation or Claims or any claims or causes of action or any chose  
6 or thing in action.

7 3.17.3 Limitations On Bank Instructions. Settling Defendants shall give no  
8 instructions or take other actions to the Bank with respect to the Operating Account pursuant to  
9 the Account Control Agreement, the Security Agreement, and/or any other Operative Agreement  
10 unless, in addition to any other terms of any Operative Agreement, such instructions are given by  
11 all Settling Defendants simultaneously; and (a) a Fundamental Event of Default by COSM has  
12 occurred; or (b) an Insolvency Event has occurred with respect to COSM.

13 3.17.4 Actions On Security Interest Or Lien. Settling Defendants shall  
14 enforce no rights or take other actions under the Lien granted in Paragraph 3.17.2 above except as  
15 allowed by this Settlement Agreement or the Operative Agreements.

### 16 3.18 SUBSEQUENT RELEASES

17 This Settlement Agreement does not relieve the Settling Defendants of any claims,  
18 demands, actions, causes of action, suits, obligations, assessments, damages, liabilities,  
19 investigation costs, remediation costs, restoration costs, treatment costs, other costs, losses, or  
20 expenses (including attorneys' fees and expert witness fees) of any kind or nature whatsoever  
21 (whether legal or equitable, past, present or future, ascertained or unascertained, known or  
22 unknown, suspected or unsuspected) by COSM with respect to Subsequent Releases (as defined  
23 below):

24 3.18.1 For purposes of this Settlement Agreement, "Subsequent Release"  
25 means any release of gasoline to the environment that occurs after the Effective Date of this  
26 Agreement, which release the Settling Defendants successfully claim is not a release they are  
27 required to treat pursuant to sub-Paragraphs 3.18.4 and 3.18.5 and any release after the Funding  
28

1 Termination Date.

2 3.18.2 The Engineering Committee (as defined below) shall evaluate on an  
3 on-going basis the condition of the Aquifer, including (among other things) the concentration of  
4 MTBE/TBA in the pump discharge of the Charnock Well Field, information from regional and  
5 site-specific monitoring wells, other monitoring/investigation information submitted to the  
6 RWQCB and/or USEPA, investigations, information and data required by Extremely Impaired  
7 Source Policy, and any other pertinent information.

8 3.18.3 If and when the Engineering Committee agrees that sufficient data  
9 exist to do so, the Engineering Committee shall attempt to project the remaining treatment time  
10 required to achieve Aquifer conditions that would satisfy all then-current DHS requirements for  
11 removing treatment for MTBE, TBA, and Related Petroleum Hydrocarbons from the Aquifer.  
12 The Engineering Committee shall revise any such projections periodically, based on evolving  
13 information and data, in light of then-current applicable DHS requirements.

14 3.18.4 The Engineering Committee shall seek to identify any Subsequent  
15 Release(s), unless the Engineering Committee decides otherwise. If the Engineering Committee  
16 agrees that identified Subsequent Release(s) are solely responsible for extending the treatment  
17 time required to satisfy then-current DHS requirements for removing treatment for MTBE, TBA,  
18 and Related Petroleum Hydrocarbons from the Aquifer, and that but for such Subsequent  
19 Release(s) all then-current DHS requirements for removing such treatment from the Aquifer  
20 would be satisfied at an earlier time determined by the Engineering Committee, then the Funding  
21 Termination Date under this Settlement Agreement shall be the date at which the Engineering  
22 Committee determines that DHS would have allowed cessation of such treatment but for the  
23 Subsequent Release(s). If the Engineering Committee cannot agree on any such issue, any party  
24 can submit the matter to arbitration.

25 3.18.5 Except as provided in Paragraph 3.27 ("Defaults and Remedies"),  
26 absent agreement of the parties to this Settlement Agreement, or at COSM's option pursuant to the  
27 funding termination provisions of this Settlement Agreement, under no circumstances shall the  
28



1 Funding Termination Date be earlier than the date on which DHS approves removal of treatment  
2 for MTBE, TBA, and Related Petroleum Hydrocarbons, unless: (i) sufficient information exists to  
3 determine with reasonable engineering probability the date on which DHS would approve removal  
4 of such treatment in the absence of Subsequent Release(s); (ii) the Engineering Committee  
5 identifies one or more specific Subsequent Release(s); and (iii) sufficient information exists to  
6 determine with reasonable certainty that the identified Subsequent Release(s) are the sole cause(s)  
7 of extending the required treatment period. If arbitration occurs to resolve these issues, the  
8 Settling Defendants shall have the burden of proof by clear and convincing evidence. If COSM is  
9 the prevailing party in this arbitration, it shall recover its reasonable fees and costs in the  
10 Engineering Committee and arbitration process. If, however, COSM does not prevail in this  
11 process, it shall bear its own fees and costs.

12           3.18.6     Where the Engineering Committee identifies any Subsequent Release  
13 that may affect the Aquifer, the Settling Defendants and COSM shall take appropriate actions  
14 against the responsible party or parties (i) to mitigate or eliminate any impact of the Subsequent  
15 Release(s) to the Aquifer, and (ii) to recover and deposit into the Operating Account any  
16 additional costs of treatment attributable to the Subsequent Release(s). COSM's reasonable costs  
17 related to the activities described in this sub-paragraph shall be Treatment Facility Costs.

18           3.18.7     The ~~procedures and conditions for binding alternative dispute~~  
19 resolution ("ADR") concerning technical disputes that may arise under this Paragraph 3.19  
20 ("Subsequent Releases") are contained in Paragraph 3.28 ("Alternative Dispute Resolution  
21 Process") below.

### 22           3.19     **NO ASSIGNMENT WITHOUT CONSENT**

23           Neither the Settling Defendants, on the one hand, nor COSM, on the other hand,  
24 may assign their rights or obligations under this Settlement Agreement without the consent of the  
25 other(s). That consent shall not be unreasonably withheld; provided, however, that no such  
26 assignment shall relieve the Settling Defendants or COSM of their obligations under this  
27 Settlement Agreement. A merger, or divestiture of a major subsidiary or division, or merger or  
28